BAR BULLETIN

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IN THIS ISSUE

DON'T FORGET
YOUR COMMUNITY CHEST !
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BAR BULLETIN

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THANKSGIVING

THE fourth Thursday of this month is set aside as Thanksgiving Day. In his Proclamation inviting the attention of the people to the joint resolution of Congress so designating that day, the President of the United States requested that both Thanksgiving Day and the coming New Year's Day "be observed in prayer, publicly and privately."

On Thanksgiving Day in 1941 this nation was nominally at peace, though even then the die had been cast and there were those who knew that war was but a day or two away. The year that has past has brought tragedy into the homes of many and disruption to the every-day lives of all of us. The war has cast heavy burdens, not only on the armed forces of the nation, but upon those who stay at home. And the events of the year have demonstrated that there are those among us, both native and foreign born, who are loyal only to our enemies, and whose disloyalty to this country actuates their every move.

While these things have followed in the wake of the attack on Pearl Harbor on December 7, 1941, it seems to us that that day this year has a greater significance—a significance certainly greater than the first day of the new calendar year. It is the anniversary of the day on which the people as a whole were awakened to a realization that our very existence, aye, even our personal safety was at stake, and that we would suffer the fate of other conquered nations unless we were willing to get down to fundamentals in order to win the war then thrust upon us. We have shown that we have the power and the will to bring about the vast changes in our way of living required of a nation at war; that most of us are willing to make the individual sacrifices necessary in the conduct of total war. Above all we have shown a continuing faith in our power and right to govern ourselves and maintain our established form of government.

It is for these things and many more, despite our manifold shortcomings, that we may well give thanks as well on the anniversary of Pearl Harbor as on the fourth Thursday of this month, and offer up the prayer that we may have the continued strength to preserve our liberties.

STAGGERED HOURS FOR LAWYERS

TODAY, as from its very inception centuries ago, the legal profession exists to serve the public. Today, as in the past, the lawyer is among the first to volunteer his services to the nation in times of national emergency. Today, as always, he is a leader, particularly in the reorganization of civilain life—regimentation, if you please—without which wars cannot be waged successfully. Mindful of their responsibilities the officers of the Los Angeles Bar Association have worked for endless hours with state and federal officials in a valiant effort to solve some of the countless problems confronting us all because of the War.

The Southern California War Transportation Council, working in conjunction with all interested parties, has adopted a schedule of staggered hours for the release of all persons employed in manufacturing, wholesaling and office occupations in what is generally known as the Los Angeles Metropolitan Area. All attorneys and their office staffs in the area bounded by Figueroa Street, Pico Boulevard, Los Angeles Street and Alpine Street, are to be released either at 4:15 P. M. or 5:30 P. M. While these hours fixed for the closing of lawyers' offices may seem arbitrary to some, it must be realized that they are part of a schedule carefully planned with a view to utilizing available transportation to the best advantage in moving thousands of people daily from the metropolitan areas to their homes.

In the preparation of this schedule the lawyers were heard through representatives appointed by the Board of Trustees of the Association. The schedule agreed upon may not suit us all, but lawyers, at least, cannot complain that they are not thereby afforded every reasonable opportunity to serve their clients effectively. It is imperative, then, to cooperate to the fullest extent with the public authorities by observing these new requirements, lest more drastic steps are taken to compel compliance.

ROLL OF HONOR

During the past month the names of twenty members of the Association have been added to the Roll of Honor. They are:

Barry Brannen, Lt. Com. USNR; Lewis T. Gardiner, USA-CPT; John Hall, Capt. USA FA; Irving M. Harris, Lt. USA AC; Joseph Horton, Lt. US Coast Guard; William Landon Horton, Lt. (j. g.) U. S. Coast Guard; Leonard A. Kaufman, Pvt. USA AF; Patrick James Kirby, Pvt. USA AF; Baldo Kristovich, Midshipman USNR; Earl A. Littlejohns, Pvt. USA; John W. McElheney, 2d Lt. USA AF; Robert A. McMillan, Lt. Col. USA; Randolph Miller, USNR; William Rohkam, Jr., Pvt. FC USA; Richard W. Sprague, Pvt. USA; Harold W. Steiner, Pvt. USA; Lawrence C. Stevens, Lt. (j. g.) USNR; Ronald L. Tiday, Ensign, USNR; Eliot F. Wolf, Pvt. USA; Carol G. Wynn, Lt. USNR.

The service flag of the Association displayed at the November meeting, contains 178 stars. Others will be added as the information becomes available.

We would like to be advised of any promotions or of other interesting items concerning our members in the service, so that we can record the facts here.

THE BILL OF RIGHTS—AMERICA'S GUARANTEE TO AMERICA OF THE BASIC AMERICAN FREEDOMS

By William H. Anderson, of the Los Angeles Bar*

WHEN, on September 17, 1787, the Constitutional Convention, which brought our present Union into being, finished its monumental and portentous labors and signed the Constitution of the United States as drafted by them, and subsequently ratified by the Thirteen Colonies, it laid the fundamental foundation for the greatest experiment in genuine Democratic government that the world has ever known, and proposed to the people of the Colonies (perhaps to the members of the American Federation is the better term) the finest, ablest, and most thoroughly thoughted document of governmental principles ever devised.

However, in its then form, as thus adopted, and as subsequently ratified, it appealed to many—even to many of its progenitors—as a body without a soul—as a magnificent piece of governmental machinery without the safety valves and controlling "governors" that would fully insure to the people of the great nation which it was about to launch the inspired fundamentals of their freedom enunciated in the Declaration of Independence—"life, liberty, and the pursuit of happiness."

It was a governmental plan which failed to guarantee to the people themselves those very rights which were the foundation stone of their daring revolt against the tyranny of our mother country.

A "Bill of Rights" had been proposed to the convention, but rejected by it because the convention felt that if literally applied it "would have put the slave population on the same plane as the free people of the Colonies," so, "they refused to include it; for they were face to face with the stern reality that no constitution could be adopted which did not recognize the existence of slavery." Not having a draft of such proposed Bill of Rights before me, I cannot say how, or why, it so failed.

This absence of a soul in its superb body almost defeated the ratification of the Constitution—a catastrophe too horrible now to contemplate, but, nevertheless, a threatened fact. Even George Washington said, "I wish the Constitution, which is offered, had been more perfect; but I sincerely believe it is the best that could be obtained at this time. As a constitutional door is opened for amendments hereafter, the adoption of it, under the present circumstances of the Union, is in my opinion desirable."

Many of our best patriots, notably Patrick Henry, vigorously opposed its ratification. A change of eighteen votes of the ratifying convention would have defeated it.

It was almost universally claimed by the ratifying states, and particularly by the larger and more influential of them, that "individual rights were not sufficiently protected" in the Constitution as drafted and submitted for ratification; and hence, aside from the proposal to the Virginia Convention of extensive amendments with a view to meeting this claim, which amendments, if adopted by their convention, doubtless would have been a mere futile gesture, James Madison, later President of the United States, one of Virginia's greatest statesmen, "at the first session of Congress under the Constitution, introduced the

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*The author, so well known to and beloved by the Bar of this County, is a former President of the Los Angeles Bar Association, and a former member of its Constitutional Rights Committee. His article is prompted by the anniversary of the Bill of Rights occurring next month.

first ten amendments to the Constitution and, *against much opposition*, induced the House to decide in favor of their submission to the states for ratification."

One hundred and fifty-one years ago these ten amendments were ratified and our Constitution, the greatest of governmental documents, was given a soul as well as a body, and that soul is commonly referred to as our "Bill of Rights."

I was asked to write my ideas on the influence of this "Bill of Rights" upon the United States, its development and citizenship, and of the importance of the "Bill of Rights" to us today. To the splendid member of our Bar Association, one of my most excellent of good friends, who made the request, I replied, in effect: "The Bill of Rights guaranteed, and guarantees, the right to the unrestricted enjoyment wherever our Flag flies of 'life, liberty, and the pursuit of happiness;' and that is why our country has grown and waxed strong as the 'hope of the helpless,' and the greatest nation in all history where freedom in every sense of the word is an established and guaranteed fact,—not a mere meaningless shibboleth." That, in my opinion, is the crux of the question.

It hardly needs elaboration. In fact, it is self-evident.

"Life," in its best and broadest sense, means the right to live in unrestricted security.

"Liberty" is the right to enjoy without limitation all of the genuine privileges of a properly lived life.

The "pursuit of happiness" necessarily follows when given the right to live our own lives as we wish to live them within the law and in common decency.

Arbitrary restriction of any of these fundamental rights is absolutely inhibited by the "Bill of Rights"—the first ten of the amendments to our Constitution.

This "Bill of Rights," in the first of the Amendments, prohibits Congress from enacting any law "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

As this is an article by a lawyer to lawyers, it is not necessary to further pursue the protective inhibitions of these first ten amendments.

They, in their entirety, as we all know, are effective as against the government of the United States only, and not as against the several states in their sovereign capacities—jealously guarded by the constitutional convention, and jealously guarded and not intrenched upon by these first ten amendments. However, later amendments, and most particularly the XIVth amendment, placed similar restrictions upon the several states themselves; and most, if not all of the states, have incorporated in their constitutions the spirit of the national "Bill of Rights."

So every one under the protective aegis of the American Constitution, and the Constitutions of our galaxy of states, has been firmly accorded the fixed and indisputable constitutional guarantee of life, liberty and the pursuit of happiness—freedom of religion—freedom of speech—freedom of the press—freedom of the right to peaceably assemble and to petition the Government for a redress of grievances, together with many other protective securities of human and humane rights generally, all of which protective provisions constitute the very soul of our greatest of all Democracies.

Under them we have grown and flourished like the green bay tree of Scripture, and are now armed with an irresistible might and faith and resolution to go to the ends of the earth to fight the good fight for their protection.

THE SABOTAGE CASES

The Opinion of the Supreme Court in Ex Parte Quirin and Others

THE proceedings of this past summer before the Military Commission appointed by the President and before the Supreme Court in the Sabotage cases were a landmark in the history of the nation. Because of the great public interest in those cases, we take this opportunity to record for the readers of the BULLETIN the considered views of the Supreme Court as found in their full opinion announced October 29, 1942.

During the month of June, 1942, Richard Quirin and seven other persons landed on the shores of this country from German submarines carrying with them a supply of explosives, fuses, and incendiary timing devices. Seven of them were admittedly citizens of the German Reich. While landing they wore German Marine Infantry Uniforms or parts of uniforms. Upon landing they buried the articles mentioned and their uniforms and proceeded in civilian dress to other parts of the country, where they were later arrested and held by the Federal Bureau of Investigation. Before coming to this country from Germany, these men had received training at a sabotage school near Berlin, where they were instructed in the use of explosives and in secret writing. All had received instructions from an officer of the German High Command to destroy war industries and war facilities in the United States, for which they or their relatives in Germany were to receive salary payments from the German Government. They had been paid by that Government during their course of training, and were in possession of substantial sums of United States currency when they landed, which had been handed to them by an officer of the German High Command, who also instructed them to wear their German uniforms while landing in the United States.

On July 2, 1942, the President and Commander in Chief of the Army and Navy, by an Order, appointed a Military Commission and directed it to try the eight men for offenses against the law of war and the Articles of War, and prescribed regulations for the procedure on the trial and for review of the record of the trial and of any judgment or sentence of the Commission. (7 Fed. Register 5103.) On the same day, by Proclamation (7 Fed. Register 5101), the President declared that "all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who, during time of war enter or attempt to enter the United States . . . through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals". The Proclamation also stated in terms that all such persons were denied access to the courts.

The Federal Bureau of Investigation promptly surrendered the prisoners to the Provost Marshall of the Military District of Washington, who held them for trial before the Commission. On July 3, 1942, the Judge Advocate General's Department of the Army prepared and lodged with the Commission the following charges, supported by specifications: 1. Violation of the law of war; 2. Violation of Article 81 of the Articles of War, defining the offense of relieving or attempting to relieve, or corresponding with or giving intelligence to the enemy; 3. Violation of Article 82, defining the offense of spying; and 4. Conspiracy to commit the offenses alleged in Charges 1, 2 and 3.

The Commission met on July 8, 1942, and proceeded with the trial. While the trial was in progress, the defendants applied to the District Court for the

District of Columbia for leave to file petitions for habeas corpus in that court. Those petitions were denied and they appealed to the United States Court of Appeal for the District of Columbia. At the same time they petitioned the Supreme Court of the United States for leave to file petitions for habeas corpus in that Court. These petitions were set down for oral argument at a special term of that Court on July 29, 1942. While the argument was proceeding, the defendants, having perfected their appeals to the Court of Appeals, petitioned the Supreme Court for certiorari to the Court of Appeals before judgment. Certiorari was granted and the matter was heard, by stipulation, on the records, briefs and arguments in the habeas corpus proceedings.

On July 31, 1942, the court affirmed the orders of the District Court and denied the petitions for leave to file petitions for habeas corpus. (See review of the proceedings to this point in 28 Amer. Bar Assn. Journ. Sept. 1942, p. 604.)

The full opinion of the Court written by the Chief Justice, was filed October 29, 1942.* The above summary of the facts is taken from the opinion. After stating the facts, the Chief Justice said:

> Petitioners' main contention is that the President is without any statutory or constitutional authority to order the petitioners to be tried by military tribunal for offenses with which they are charged; that in consequence they are entitled to be tried in the civil courts with the safeguards, including trial by jury, which the Fifth and Sixth Amendments guarantee to all persons charged in such courts with criminal offenses. In any case it is urged that the President's Order, in prescribing the procedure of the Commission and the method for review of its findings and sentence, and the proceedings of the Commission under the Order, conflict with Articles of War adopted by Congress—particularly Articles 38, 43, 46, 50½ and 70—and are illegal and void.
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> The Government challenges each of these propositions. But regardless of their merits, it also insists that petitioners must be denied access to the courts, both because they are enemy aliens or have entered our territory as enemy belligerents, and because the President's Proclamation undertakes in terms to deny such access to the class of persons defined by the Proclamation, which aptly describes the character and conduct of petitioners. It is urged that if they are enemy aliens or if the Proclamation has force no court may afford the petitioners a hearing. But there is certainly nothing in the Proclamation to preclude access to the courts for determining its applicability to the particular case. And neither the Proclamation nor the fact that they are enemy aliens forecloses consideration by the courts of petitioners' contentions that the Constitution and laws of the United States constitutionally enacted forbid their trial by military commission. As announced in our per curiam opinion we have resolved those questions by our conclusion that the Commission has jurisdiction to try the charge preferred against petitioners. There is therefore no occasion to decide contentions of the parties unrelated to this issue. We pass at once to the consideration of the basis of the Commission's authority.

Observing that the Court was "not here concerned with any question of the guilt or innocence of petitioners", the Court considered whether the "detention and trial of petitioners . . . are in conflict with the Constitution or laws of Congress constitutionally enacted."

At the outset the Court said:

> "Congress and the President, like the courts, possess no power not derived from the Constitution. But one of the objects of the Constitution, as declared by its preamble, is to 'provide for the common defense'".

Thereupon, after noting the provisions of the Constitution conferring certain powers on the Congress as "a means to that end", and upon the President as the Executive and as Commander in Chief of the Army and Navy, in which latter capacity he has "the power to wage the war which Congress has declared, and to carry into effect all laws passed by Congress for the conduct of war and for the government and regulation of the Armed Forces, and all laws defining

Ex Parte Quirin, 317 U.S. ....., 87 L. Ed. Adv. Ops. 1, 11 U.S. Law Week 4001.

and punishing offenses against the law of nations, including those which pertain to the conduct of war", the Court comments on the pertinent Articles of War, 10 U.S.C., Secs. 1471-1593, and then proceeds with the discussion:

> From the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals. By the Articles of War, and especially Article 15, Congress has explicitly provided, so far as it may constitutionally do so, that military tribunals shall have jurisdiction to try offenders or offenses against the law of war in appropriate cases. Congress, in addition to making rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals. And the President, as Commander in Chief, by his Proclamation in time of war has invoked that law. By his Order creating the present Commission he has undertaken to exercise the authority conferred upon him by Congress, and also such authority as the Constitution itself gives the Commander in Chief, to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in time of war.
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> By universal agreement and practice of law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful. The spy who secretly and without uniform passes the military lines of a belligerent in time of war, seeking to gather military information and communicate it to the enemy, or an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property, are familiar examples of belligerents who are generally deemed not to be entitled to the status of prisoners of war, but to be offenders against the law of war subject to trial and punishment by military tribunals. See Winthrop, Military Law, 2d ed., pp. 1196-97, 1219-21; Instructions for the Government of Armies of the United States in the Field, approved by the President, General Order No. 100, April 24, 1863, sections IV and V.
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> "Such was the practice of our own military authorities before the adoption of the Constitution, and during the Mexican and Civil Wars".

This last statement is supported by several citations. The Court then reviews the pertinent Rules of Land Warfare and, after referring to a part of the Hague Convention of 1907, continues:

> Our Government, by thus defining lawful belligerents entitled to be treated as prisoners of war, has recognized that there is a class of unlawful belligerents not entitled to that privilege, including those who though combatants do not wear "fixed and distinctive emblems". And by Article 15 of the Articles of War Congress has made provision for their trial and punishment by military commission, according to "the law of war."
>
> By a long course of practical administrative construction by its military authorities, our Government has likewise recognized that those who during time of war pass surreptitiously from enemy territory into our own, discarding their uniforms upon entry, for the commission of hostile acts involving destruction of life or property, have the status of unlawful combatants punishable as such by military commission. This precept of the law of war has been so recognized in practice both here and abroad, and has so generally been accepted as valid by authorities on international law that we think it must be regarded as a rule or principle of the law of war recognized by this Government by its enactment of the Fifteenth Article of War.
>
> Specification 1 of the first charge is sufficient to charge all the petitioners with the offense of unlawful belligerency, trial of which is within the jurisdiction of the Commission, and the admitted facts affirmatively show that the charge is not merely colorable or without foundation.

In the course of the ensuing brief discussion of petitioners' contentions,

the court holds them subject to "the punishment prescribed by the law of war for unlawful belligerents", noting that it is without significance that "they were not alleged to have borne conventional weapons or that their proposed hostile acts did not necessarily contemplate collision with the Armed Forces of the United States . . . Modern warfare is directed at the destruction of enemy war supplies and the implements of their production and transportation quite as much as at the armed forces. Every consideration which makes the unlawful belligerent punishable is equally applicable whether his objective is one of the other." As to the petitioner Haupt, who claimed to be a citizen of the United States by virtue of the naturalization of his parents, the Court held that "citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because in violation of the laws of war. . . . It is as an enemy belligerent that petitioner Haupt is charged with entering the United States, and unlawful belligerency is the gravamen of the offense of which he is accused."

As to all the petitioners the Court next held that they are not "any the less belligerents if, as they argue, they have not actually committed or attempted to commit any act of depradation or enter the theatre or zone of active military operations." So, too, after a full examination of the authorities, the Court held against their contention that "even if the offenses with which they are charged are offenses against the law of war", their trial was subject to the Fifth and Sixth Amendments, requiring presentment or indictment by a grand jury and trial by a jury in a civil court.

> We cannot say that Congress in preparing the Fifth and Sixth Amendments intended to extend trial by jury to the cases of alien or citizen offenders against the law of war otherwise triable by military commission, while withholding it from members of our own armed forces charged with infractions of the Articles of War punishable by death. It is equally inadmissible to construe the Amendments —whose primary purpose was to continue unimpaired presentment by grand jury and trial by petit jury in all those cases in which they had been customary—as either abolishing all trials by military tribunals, save those of the personnel of our own armed forces, or what in effect comes to the same thing, as imposing on all such tribunals the necessity of proceeding against unlawful enemy belligerents only on presentment and trial by jury. We conclude that the Fifth and Sixth Amendments did not restrict whatever authority was conferred by the Constitution to try offenses against the law of war by military commission, and that petitioners, charged with such an offense not required to be tried by jury at common law, were lawfully placed on trial by the Commission without a jury.

As was to be expected, the effect of the decision of the Court in *Ex parte Milligan,* 4 Wall. 2, 18 L. Ed. 281, was discussed at length in the briefs and in the oral argument (see 28 Amer. Bar Assn. Journ. at p. 606). Answering petitioner's contentions with respect thereto the Court said: "We construe the Court's statement as to the inapplicability of the law of war to Milligan's case as having particular reference to the facts before it. . . . The Court's opinion is inapplicable to the case presented by the present record." Continuing, the Court said:

> We have no occasion now to define with meticulous care the ultimate boundaries of the jurisdiction of military tribunals to try persons according to the law of war. It is enough that petitioners here, upon the conceded facts, were plainly within those boundaries, and were held in good faith for trial by military commission, charged with being enemies who, with the purpose of destroying war materials and utilities, entered or after entry remained in our territory without uniform—an offense against the law of war. We hold only that those particular acts constitute an offense against the law of war which the Constitution authorizes to be tried by military commission.
>
> Since the first specification of Charge I set forth a violation of the law of war, we have no occasion to pass on the adequacy of the second specification of Charge I, or to construe the 81st and 82nd Articles of War for the purpose of

ascertaining whether the specifications under Charges II and III allege violations of those Articles or whether if so construed they are constitutional. *McNally v. Hill*, 293 U. S. 131.

Finally, the Court considered petitioners' contention that the President's Order of July 2, 1942, so far as it lays down the procedure to be followed on the trial before the Commission and on the review of its findings and sentence, and the procedure in fact followed by the Commission, are in conflict with Articles of War 38, 43, 46, 50½ and 70". Answering this contention the Court said:

> We need not inquire whether Congress may restrict the power of the Commander in Chief to deal with enemy belligerents. For the Court is unanimous in its conclusion that the Articles in question could not at any stage of the proceedings afford any basis for issuing the writ. But a majority of the full Court are not agreed on the appropriate grounds for decision. Some members of the Court are of opinion that Congress did not intend the Articles of War to govern a Presidential military commission convened for the determination of questions relating to admitted enemy invaders and that the context of the Articles makes clear that they should not be construed to apply in that class of cases. Others are of the view that—even though this trial is subject to whatever provisions of the Articles of War Congress has in terms made applicable to "commissions"—the particular Articles in question, rightly construed, do not foreclose the procedure prescribed by the President or that shown to have been employed by the Commission, in a trial of offenses against the law of war and the 81st and 82nd Articles of War, by a military commission appointed by the President.

Having thus disposed of petitoners' several contentions, the Court concluded their opinion in the following language:

> Accordingly, we conclude that Charge I, on which petitioners were detained for trial by the Military Commission, alleged an offense which the President is authorized to order tried by military commission; that his Order convening the Commission was a lawful order and that the Commission was lawfully constituted; that the petitioners were held in lawful custody and did not show cause for their discharge. It follows that the orders of the District Court should be affirmed, and that leave to file petitions for habeas corpus in this Court should be denied.

The record shows that Mr. Justice Murphy took no part in the consideration or decision of these cases.

LAWYERS AS EMPLOYEES OF THE GOVERNMENT*

A RECENT editorial in the *Chicago Tribune* called attention to the fact that a man otherwise eminently qualified for a government position as a personnel director, was rejected because he was a lawyer. A member of our Association advises us that no lawyer may be appointed to an administrative position with the W.P.B. One of the most widely circulated Washington news letters recently carried the charge that the trouble with administrative orders was that they were being drawn by lawyers.

All of this is evidence of the need of educational work among the general public, not only by our Association, but by all Bar Associations, as to the capabilities of lawyers. The idea that a man cannot be a competent personnel director or administrator because he is a lawyer is ridiculous on its face. We have no doubt that a cursory search would prove that many lawyers were occupying such positions in industry.

We admit that many administrative orders are almost unintelligible. We cannot believe that they were drawn by competent lawyers. If the Washington writer had charged that too many such orders were being drawn by young lawyers just out of law schools without sufficient experience or ability, there might have been some justification for his charge. But to condemn all lawyers because of the incompetence of some is unfair.

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*Reprinted from the Editor's page of the Chicago Bar Record for November, 1942.

JUSTICE IN HIGH GEAR

By Frank G. Tyrrell
Judge of the Municipal Court, Los Angeles

THERE is an insistent demand to speed up the production of munitions. Everywhere about us, time has become more than ever vital and priceless. Can we put the administration of justice in high gear, without sacrificing necessary deliberation? In most transactions, celerity of movement is entirely consistent with dignity; so I do not think we need be concerned about that; it is frequently lost in unseemly wrangling, anyway, or sometimes in unseemly levity. There is abundant reason for both bench and bar to face this question squarely and promptly. Projects for supervision of the courts "from the outside" are in the air. It is trite to say, "Justice delayed is justice denied," but we do not always realize that justice is subject to more delay from dilatory tactics in the trial of causes than from congested calendars.

In the Los Angeles Municipal Court we have a battalion of thirty judges. The personnel is high and fine. There could not be found in any industrial enterprise a like force of thirty men without a superintendent or foreman; and we have our Presiding Judge, chosen by ourselves for a term of one year. The Superior Court with a regiment of fifty judges has a similar organization. And then there is over all, the Judicial Council. So far as concerns organization, the courts of the State seem to be well organized. How about administration?

The County Bureau of Efficiency and the Supervisors once started an inquiry into the vacation terms of the judges, and perhaps also into the court hours of the respective judges. Why not? The County contributes to the payment of their salaries, and therefore has a direct pecuniary interest in the way they discharge their duties. Such a survey ought to be stimulating, at least, entirely apart from any question of jurisdiction or power to remedy any defects revealed. But the method is insufficient; it cannot cover all the ground.

The vast importance of this subject is not easily expressed or understood. Justice is perhaps desired more than it is revered; and yet the literature of the law abounds in rhapsodical apostrophes to justice, none of which are exaggerated. The courts are of transcendant importance in the scheme of democracy, and they ought to be operated in such fashion as to furnish a model of efficiency to every other department. They are manned by men of learning and specialized training. Those who resort to them with their grievances, for the adjudication of their rights, have here a contact with their government more immediate and vital than anywhere else, and the reaction, the result, affects their pecuniary interests and their deepest feelings. Bench and bar cannot expect the people to tolerate for long any deviation from rectitude, any waste of time or money, any slovenliness; least of all, any delay caused by a tenacious idolatry of the buried and forgotten past. Not only is ours a government *of* and *by* the people, it is *for* the people; and if the courts in any particular do not function for the people, the two other prepositions ought to remind us that we are likely to hear from our masters.

And we have been hearing. They have turned away from antiquated procedure and devised a swarm of administrative tribunals, the end of which is nowhere in sight. And now projects of control from the outside are being discussed. None of us are particularly happy over the multiplication of administrative commissions. We shall be still more greatly disturbed if the people set up some form of court control which presses upon us from without and above. It is a problem for the lawyers as well as the judges, and the bar must cooperate with the bench in devising the necessary means of improvement.

With so much already accomplished, and with far-reaching plans for the

further improvement of the administration of justice by our organized bar, it may seem ungracious to strike this note; but nothing less than enough is enough. In the memorable words of Lord Chief Justice Holt (Tuchin's Case, 14 Howell's State Trials, 1095, 1128), "If judges should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it." This is a sweeping generalization; "all governments" include despotisms, which the people endure whether they like them or not; but in a democracy, the government "subsists" not only by the "consent" but by the procurement of the governed. Lawyers and judges know these obvious facts well enough; the trouble is, they do not always act as if they knew them.

Perhaps there should be some sort of closer supervision of the work of the courts. Our Presiding Judges are little more than managers of a clearing house for assigning the work to the various departments, and divisions. Would it be in any way improper to give them a degree of authority, and center in them responsibility for the results achieved by the courts? About all that is said to the divisions of the Municipal Court is, in effect, to each judge, "Let conscience be your guide." If we were always conscientious, always alert, diligent, and ready, this might work well; but then again, it might not, for everybody has "off days."

Ignorance of details in the work of the Judicial Council forbids any comment or suggestion in that area of supervision. Its powers and their scope seem to be adequate, and their reports reflect great diligence and well-directed effort. In his address at the meeting of the National Conference of Judicial Councils in Washington, May 11, 1939, Roscoe Pound said, "Much remains to be done in order to make judicial justice so thoroughly effective . . . as to do away with any legitimate call for superseding it." And again, "Much progress has been made in the federal courts and some progress has been achieved in a few states. But everywhere there is no more than a beginning." Referring to projects for supervision and control of the courts "from the outside," he opines, "Executive control of the judiciary is a long step toward an absolute polity."

Unless democracy is well worked, it must yield to forms absolute and despotic. All over Europe it has yielded and been supplanted. Let us show how deeply we deplore this, not by flinging rhetorical nosegays on the altars of Justice, but by rolling up our sleeves and pitching in to do, with insight, energy, skill, and expedition, the day's work of democracy in action. So shall we "possess the people" with a good opinion of their government.

WASHINGTON—OR INDUSTRY?

WE are fighting two wars, the global war and another war which will determine the destiny of this nation for the next several generations. This second war involves the political factions and forces who would turn America into something not the America we have known and cherished until recently.

Will the end of the war find the majority of the common people believing that Washington has done a better job than industry and business?

The pendulum went too far in the roaring '20's when brokers and financiers, drunk with power, lost their heads.

Is the pendulum showing signs of beginning to move away from the ultra left of the '30's a little bit toward the right? I think it is.—B. C. FORBES, *Publisher, Forbes' Magazine.*

FREDERICK W. HOUSER

Memorial by the Board of Trustees of the Los Angeles Bar Association

Frederick W. Houser passed to his reward on the 12th day of October, 1942. It is fitting that the Board of Trustees of the Los Angeles Bar Association record on its minutes the great loss that the Bar has suffered in the death of this distinguished man, who served the cause of justice so well and so long.

At the time of his death Frederick W. Houser was a Justice of the Supreme Court of the State of California. There he had served for a period of five years. Previously for thirteen years he was a Justice of the District Court of Appeal, for many years being the Presiding Justice thereof. Until his elevation to that bench, and beginning in 1906, he was a Judge of the Superior Court for the County of Los Angeles. Previous to that time he served the State in its Legislature.

The public service of Frederick W. Houser, as a legislator and as a judge, was characterized by an unwavering regard for public duty. In labor he was indefatigable. In his judicial decisions he was courteous, courageous, independent and learned. In his passing the State has lost an outstanding Judge and one of its best citizens.

Therefore,

BE IT RESOLVED by the Board of Trustees of the Los Angeles Bar Association:

1. That the Los Angeles Bar Association express its deep sympathy to the widow and family of Mr. Justice Houser.

2. That a copy of this resolution be forwarded to the Supreme Court of the State of California with the request that it be spread upon the minutes of the court.

3. That this resolution be spread upon the minutes of the Board of Trustees and that a copy thereof, duly certified, be transmitted to the widow of the deceased.

DELINQUENCY IN WARTIME

Karl Holton, Los Angeles County Probation Department*

TO HEAR some people talk or to read some news releases, you would think that juvenile delinquency was something new. It is not something that suddenly appeared since the war. In 1940, 4063 children were brought before the Juvenile Court of Los Angeles County. In 1941 there were 4762 cases, an inirease of 17.2% Then in Derember, 1941 the Japanese attacked Pearl Harbor. It seems that not many people outside of those working directly with the Juvenile Court were aware of the great increase in juvenile delinquency which occurred in 1941, but everyone seems to have expected a tremendous increase after Pearl Harbor and some people almost seem to be disappointed that the increase did not come up to their expectations.

Strangely enough the increase in the number of Juvenile Court cases since Pearl Harbor has been much smaller than the increase which occurred in 1941. During the first six months of 1942 we had 5.2% more Juvenile Court petitions than in the first six months of 1941.

The question naturally arises as to why delinquency increased so much in 1941 (before the war) and why the rate of increase dropped so markedly since the war. The increase in delinquency in 1941 has many interesting implications which cannot be adequately discussed in the limited time at my disposal. However, it appears that this increase was due to certain factors related to the sudden economic expansion of 1941.

In this County the index of business activity published by the Los Angeles Chamber of Commerce rose from 121.3 in 1940 to 147.6 in 1941 as a result of the tremendous sums being spent for war production, and past experience has shown that in boom years delinquency increases. 1929 was such a year and produced a record number of juvenile court cases, whereas there was a great decrease in delinquency during the depression years, not only in Los Angeles but in most communities throughout the United States. Why should this be so? Apparently it is because in prosperous times there is a tendency for parental supervision and control to be weakened. Many women go to work away from home, leaving young children without sufficient supervision. Divorce rates increase, the consumption of liquor soars, commercialized recreation draws children and adults more and more away from the primary circle of the home, and there is greater temptation and greater opportunity for children to get involved in delinquency.

In a paper given by Dr. Martha Elliott at the California Conference of Social Work in San Francisco last April, she called attention to children's need for emotional security within the family group and within the community. In time of peace emotional disturbance among children is caused primarily by maladjustment, separation of parents, poor parent-child relations, lack of acceptance by the family or the community, and from many other social and economic factors essential to the child's basic sense of security. In time of war all of these causes are exaggerated. The family is broken by the father's entrance into the armed forces or by his leaving home for work, or by the absence of the mother from home in order to work. The family income may be seriously reduced if the father goes into the armed forces, or very materially increased if both father and mother are employed in defense activities. Adolescent children earn what for them is high wages. All of these things tend to break down the established way of life and cause a sense of insecurity and unrest.

(Continued on page 64)

*An address by Mr. Holton at the recent Children in War Time Conference in Los Angeles.

THE NOVEMBER MEETING OF THE ASSOCIATION

Due to dimout regulations and attendant inconveniences, the monthly meeting of the Association was held at noon, November 19, instead of in the evening.

The principal speaker was Dr. Edward L. Cunningham, President of The Llewellyn Biological Institute, formerly a resident of Tokio and president of the American Merchants Association of Tokio. He talked informally but very frankly on what we may experience in defeating the Japanese. In the course of his remarks Dr. Cunningham contrasted the long time planning by the Japanese for world conquest with the lack of that characteristic in our own people in our relations with the family of nations. He said that we Americans woefully misunderstand and underestimate the menace we face from the Japs—that our eyes are not opened to the fanaticism of a race which traces its ancestry through 4000 years to the Sun Goddess, and thinks that it is superior to us. We expect to be able to publish the full text of Dr. Cunningham's remarks in the next issue of the BAR BULLETIN.

The meeting was largely attended. Among those at the speaker's table come to do honor to B. Grant Taylor, who is retiring after 32 years of service as Clerk of the Supreme Court of California, were Chief Justice Phil S. Gibson and Justices Shenk, Curtis, Edmonds, Carter and Traynor, former Chief Justice Louis W. Myers, and former Justices Frank C. Finlayson and John W. Preston.

As required by the By-Laws, a nominating committee was elected to nominate officers for the coming year. The committee includes Henry G. Bodkin, Allen W. Ashburn, Julius V. Patrosso, Clifford E. Hughes, Paul Vallee, John C. Macfarland, Herbert T. Morrow, George E. Farrand, Patrick Henry Ford, Arnold E. Praeger, John Perry Wood, Walter H. Odemar, Isadore B. Dockweiler, Lawrence L. Larrabee and Edward D. Lyman.

(Continued from page 62)

In view of these facts we might expect delinquency to increase as rapidly in 1942 as in 1941 since the trend of women into industry and the other factors which have been mentioned are continuing at an accelerated rate. The fact that delinquency has not increased more than 5.2% since the war is due to certain aspects of the war which have caused decreases in certain types of offenses as well as increases in others.

For example, the military service has taken a large segment of the male population away from the community including, of course, many potential law violators. As a result, the records of the Los Angeles Police Department reveal a 19% decrease in the total number of crimes reported during the first seven months of 1942 as compared to the corresponding period of 1941, this decrease occurring in nearly every category of offense.

The outstanding result of the war in respect to juvenile delinquency has been the drop in auto thefts which followed the rationing of tires and cars. During the first six months of 1942 we had 30.7% fewer cases of auto theft in Juvenile Court than in the corresponding period of 1941. Juvenile auto thefts are almost invariably due to the combination of a key left in the dashboard of a car and a boy who is not able to resist the temptation of joyriding in it. A car owner who makes it so easy for a youngster to steal his car is setting a trap which may cause great unhappiness to a boy and his parents. We have never been able to persuade people to take the keys out of their cars for altruistic reasons but since tires and cars have been rationed many people have begun to take a little more care of their property. As a result, from present indications, we will have about 225 fewer cases of auto theft this year than last year. This is especially significant in view of the fact that all other types of juvenile theft have increased. The total increase in cases of grand theft, petit theft, burglary, robbery and forgery amounts to 21.8%.

The trend in certain other types of cases is interesting. There was a decrease in the number of children brought into court because of transiency. There was an increase in the number of children from unfit homes. There was a slight increase in the number of sex problems (4.7% for boys, 5.8% for girls). During the first six months of 1942 we had only one case of negligent homicide as compared to eight in the first six months of 1941. There was also an increase in truancy cases.

We have heard a great deal about the problem of delinquency among Mexican children in Los Angeles lately, and I am afraid that many people have an incorrect impression. For some years the Probation Department, police authorities and social agencies have been faced with the problem of gang fights among Mexican children. It is estimated that there are approximately 36,000 Mexican children between the ages of 6 and 18 in this County, many of them coming from poverty stricken homes, with foreign born parents, and reared in the disturbing atmosphere of economic stress, cultural conflict, and social isolation. Among this large number of children there are some aggressive, maladjusted, and sometimes abnormal elements, just as there are in every racial group. The juvenile gang problem which has been acute at one time or another in practically every large American city, has been particularly serious among these Mexican children. Two years ago an intensive study was made of this situation which was at that time acute in the Clanton Street area, and some progress was made in coordinating the efforts of public and private agencies for a systematic attack on this problem. This year there have been several serious outbreaks of gang fighting, and at present the public and private agencies concerned with recreation and the prevention and correction of delinquency are working together through a committee organized at the suggestion of the Judge of the Juvenile Court to

further reinforce and coordinate their efforts. Much progress has been made and is being made, but we must not expect to find a panacea, nor should we lose our sense of proportion. The great majority of Mexican children are not involved in these delinquent activities. As a matter of fact, the total number of Mexican boys brought into Juvenile Court during the first six months of 1942 showed no increase over the number in Court during the corresponding period of last year. An analysis of their cases shows that auto thefts committed by Mexican boys decreased more than the total rate of decrease and that other types of theft committed by Mexican boys increased only 6% (as compared to the 21.8% increase in the total for all racial groups). In other words, there is no "wave of lawlessness" among Mexican children, although there is a specific problem of gang violence that must be, and is being dealt with.

As far as the so-called gang warfare among Mexican children is concerned there are two things that seems to be of paramount importance. One is, that the law enforcement agencies quickly remove from the community those juveniles who are the leaders and who are guilty of acts of vandalism and violence. Secondly, and even more important, is the necessity to let the thousands of American children of Mexican descent know that the courts and social agencies and the people of Los Angeles are proud to have them in the community and guaranty them the full protection and rights of our Constitution and of our American way of life.

The instances of gang fighting among Mexican youths which have been so well publicized have naturally appealed to the imagination of the public (including suggestible youths who might like to see their names in the papers too).

There is, however, another racial group which, like the Mexican population, suffers from serious economic and social disadvantages, and among whom there has been a much more serious increase in juvenile delinquency. There was an increase of 111.8% in the number of Negro boys brought into our Juvenile Court in the first six months of 1942 as compared with the first six months of 1941.

In 1941 Negro boys constiuted 7.1% of the total number of boys' cases. During the first half of 1942 the percentage rose to 11%. In contrast to this the Mexican boys who formed 28.1% of the total cases in 1941 were only 25.5% of the total in 1942. Other boys constituted 65% of the total in 1941 as compared to 63.5% of the total in 1942. In other words, the Negro group has increased much more than other racial groups. This situation illustrates the fact that if we are to deal with these problems intelligently we must be guided by objective knowledge of the facts and not be unduly influenced by the newspaper sensation of the moment.

We have been hearing a great deal about England recently. Reports of increasing delinquency in England have been quoted very freely, and all sorts of statements have been based upon scraps of statistics from that embattled land. Certainly we would expect an increase in delinquency in a country which has been so severely bombed as England, where one-fifth of all the homes have been damaged by bombs, where hundreds of thousands of children had to be hastily taken from their homes in mass evacuation, and where 55% of all the people, including a large proportion of the women, are engaged in war work or military service. As a result of these conditions it appears that the delinquency rate in England has now nearly reached the level of delinquency in the United States. It is impossible to make an exact comparison as to delinquency in different countries but authorities have generally agreed that delinquency rate has been higher in the United States than in any other civilized nation. (Carr: "Delinquency Control".) It is meaningless to speak of increases unless we know what level we are starting from, and I am afraid that some of us have forgotten

that we in the United States begin to count our increases from a much higher level than does England.

So far I have been discussing the effects of the war upon juvenile delinquency. Perhaps more attention should be given to the fact that juvenile delinquency has a very serious effect upon the war. Recently a boy in New Jersey, in attempting to burglarize a store, started a fire which resulted in the destruction of $250,000 worth of property. In this time of war emergency that kind of loss is equivalent to sabotage. In some cases of sabotage the effect of juvenile delinquency is not so serious as in that case. Perhaps it is just a stolen car damaged or the tires blown out; perhaps it is merely a home burglarized and personal property stolen or destroyed. Nowadays we are trying to conserve every scrap of useful material, and the material damage resulting from delinquency in Los Angeles County alone would make a staggering total if it could be added up, but the material damage caused by juvenile delinquents is not the most serious way in which delinquency impedes our war effort. More serious is the loss of man power. To take a single example: there are in excess of 600 youths at the Preston School of Industry who might be contributing to victory either by serving in the military forces, working in agriculture, industry, or preparing themselves for future service. Instead of that they are hindering the war effort by requiring special care and supervision at a time when our nation needs the aid of every citizen. However, it is not the juvenile delinquents only who must be considered in this connection for we know that a majority of our adult offenders began their criminla careers as juvenile delinquents. At the present time there are approximately

18,000 adults in the jails and prisons in California. These people are not in a poistion to aid the war effort but are a dead-weight interfering with the defense of our country. In other words, I believe it is important for us to realize that juvenile delinquency constitutes a kind of "Fifth Column" in our midst and must be combatted not only for humanitarian reasons but as a measure of national defense.

In the face of the fact that the war is resulting in an increase of delinquency and that delinquency is a threat to our national safety, we find that facilities for combatting juvenile delinquency are being curtailed and eliminated. The crime prevention projects of the W. P. A. have been withdrawn, W. P. A. Playground Directors are no longer available, CCC Camps have been closed and other Federal actitivities in the field of delinquency prevention have been curtailed. At the same time volunteer and professional personnel in the field of recreation, education, and social case work have been increasingly diverted into the war effort. Playgrounds have been requisitioned for military use. Perhaps these things are unavoidable but I wonder if some of them are not due to a mistaken feeling that delinquency prevention is not essential. In addition to these factors we see increasing numbers of unsupervised children as a result of women going into war industry and war services.

CONCLUSIONS

We have been talking about trends in delinquency and the seriousness of the problem in Los Angeles County at present. The war has intenstified this problem. On the other hand, juvenile delinquency is an obstacle to victory, sabotaging essential materials, and reducing our manpower. Moreover, the agencies attempting to prevent delinquency and to redirect delinquents are being seriously hampered by loss of personnel and curtailment of programs.

I have no panacea to suggest. This is not a problem that can be solved overnight. There is no magic formula by which the causes of delinquency can be suddenly abolished. Good intentions are not sufficient to do the job. First of all, we must get at the facts objectively and not be governed by subjective impressions or wishful thinking. In the second place, we must be willing to face the facts, unpleasant as they may sometimes be, and not evade important issues for fear of hurting someone's feelings. In the third place, sustained effort is needed, not just the temporary enthusiasm of the moment but the unselfish continuing loyalty and hard work, without which no program can be effective.

Speakers at this conference were requested to make recommendations which in their opinion would be of value both in long time planning and in helping to solve immediate needs. In compliance with this request I venture to offer the following recommendations which may be worthy of some consideration:

1. The establishment of certain special facilities which the community badly needs to care for some of its more serious problems. These are:
   (a) Detention facilities for older boys outside of the county and city jails, and separate and apart from the detention home for younger children. Several of the grand juries, the Judge of the Juvenile Court, the Probation Committee, Probation Officer, and various committees of the Council of Social Agencies have made this recommendation many times during the past years. The Sheriff is doing as good a job as he can to care for these boys in the County Jail, but it is not possible for him to provide the type of detention facilities necessary in the jail unit as constructed.
   (b) A twenty-four hour school camp for 13, 14 and 15 year old boys who cannot adjust in our public school system and who would respond to this type of program. This has been urgently recom-

mended by school groups, grand jury committees, and other study committees for several years. The Board of Supervisors has been anxious to provide this facility but during the depression years such a program could not be financed. A camp of this type would afford an opportunity for boys of all races, colors, and creeds, and would help care for younger boys of Mexican descent and colored boys.

(c) Instituional facilities for the care of colored girls. These are woefully lacking and should have been provided many years ago. Innumerable committees have studied the problem, have made various recommendations, but nothing has been done. We need an institution with hospital facilities where girls of all races and colors may be given training and medical care. There is no institution of this type to care for the girl who does not require state school commitment but who is too difficult a problem to be placed in institutions caring for the non-delinquent child.

2. A revision and strengthening of programs in recreation centers and settlement houses in areas of greatest need so that programs may be offered on Sundays, holidays and during school vacations when children need them most.
3. Additional financial help and recruitment of volunteer personnel for our preventive, character-building, recreational, and child care agencies. In view of the present loss of professional staff from these agencies it would seem that this recruitment of volunteers is urgently necessary if the programs are to be expanded to meet new needs, or even if present programs are to be satisfactorily continued.
4. The community badly needs additional Child Guidance Clinics for the study and treatment of both pre-delinquent and delinquent children.
5. The Coordinating Councils, the Council of Social Agencies, schools, churches, law enforcement agencies, courts, and Probation Department should form a permanent delinquency prevention committee on a county-wide basis to which all major problems in this field could be referred. As a source of information and guidance for this committee a central delinquency file should be established which should be county-wide in scope. Such a file probably should be established in the Probation Department since that department already has records on a county-wide basis on many thousands of children. Such a file would be available only to representatives of accredited agencies concerned with child welfare. Intelligently used the file would be of tremendous value in a county-wide delinquency prevention program and should keep many children out of the Juvenile Court. It would also aid in protecting the community by assuring the detection of repeated law offenders.
6. It is imperative that we strengthen Americanization programs in every possible way through our churches, our schools, our recreation centers, and settlement houses. These programs seem to be needed most in communities having large numbers of American children of Mexican descent.
7. Staff members working with children in detention homes and correctional schools have been badly underpaid. This has been true for years and has made it difficult to obtain and to keep the type of personnel desirable. At the present time the staff turnover in these institutions is so great that it is almost impossible to mange them. Salary adjustments should be made.

8. During these war years every many, woman and child wants to feel that they have some real part in national defense. Most of our boys and girls have not been given any vital part to play in our civilian defense programs. Every effort should be made to find ways to let them really participate in activities which they recognize as necessary and worthwhile.

We talk so much about winning the war. It seems to me that it is time each one of us realizes that the job of winning the war begins right here with you and me, and not with the fellow next door or the man across the street.

THE SUPREME COURT, A BRIEF APPRAISAL*

By George R. Farnum, of the Boston, Massachusetts Bar
Former Assistant Attorney-General of the United States

ANOTHER year has commenced in the history of the world's most important judicial tribunal—the United States Supreme Court. Incidentally, its leader, Harlan F. Stone, whose appointment to the court goes back 17 years and whose services as chief justice span exactly one term, has just reached 70, the age of optional retirement. Vigorous of mind and robust of body, and with a high appreciation of the influence of his great office, it is a confident prediction that any early retirement is the last thought in his mind.

An Interesting Study

The work of the Court during the previous year—though overshadowed in public interest by the engrossing drama of the great war—presents an interesting study of the human element in the administration of justice as well as an instructive commentary on judicial trends.

For the four years of Roosevelt's first term no vacancies occurred on the Court. The break began in 1937, and during the four years that followed he appointed no less than seven members to the Court and elevated a Coolidge appointee to the chief justiceship. The ninth and remaining member of the Court, Roberts, owes his appointment to Hoover. Roosevelt's feud with the old court made it quite certain that he would be astute to select judges upon whose economic views and social philosophy he could confidently count.

Control of Court

The nub of his grievance had been the havoc wrought with his New Deal legislation in 1935-36 by the then controlling conservative majority of the Court. To assure his views a preponderant vote in its deliberations, in February, 1937, he suddenly attacked with his plan for enlarging its membership. This project was defeated in Congress after a protracted and bitter struggle. However, the threat to the jealously guarded independence of the tribunal was enough to convert Chief Justice Hughes and Justice Roberts, who held the balance of power between the die-hard conservatives (Van Devanter, McReynolds and Sutherland) and the fighting liberals (Brandeis, Stone and Cardozo) to the views of the latter. The same year Van Devanter retired. Black was appointed to succeed him, and the process began by which the President's appointees were soon to be in their present complete control of the Court.

From the spring of 1937 the Court has sustained the constitutionality of every act of Congress that has come before it, if my memory is correct. In this respect Roosevelt has had very much his way. If, however, it was his hope to organize a court which would work in complete harmony, that hope was sadly

*Reprinted by permission of the author from *The Boston Traveler*, October 17, 1942.

frustrated. Rarely, if ever, in the history of the tribunal has there been so much difference of opinion among the judges as during the last term. While the split in the old Court was largely over the constitutionality of statutes, the divergence of views among the judges today is principally over their meaning. The power to annul a law passed by Congress and approved by the President is a serious matter and ought to be exercised, as indeed it has been, with a grave sense of responsibility. But an issue of constitutionality frequently involves a question of the fundamental philosophy of the judges and the failure to reconcile such differences is not surprising. The interpretation of a law, however, is a very different matter. This involves a determination of what Congress intended. Conceding that this is not always an easy question, it is nevertheless most unfortunate that the members have not been more successful in coming to an agreement.

Byrnes' Resignation

Furthermore, the President has apparently been so intent on selecting men who would see eye to eye with him in his New Deal experiments that he neglected to give adequate consideration to certain other qualifications. Great judicial service is not likely to be the contribution of one whose whole heart and soul are not exclusively in his work. Byrnes' resignation is an instructive case. It is perhaps doubtful if he ever found his judicial labors entirely congenial, and I have an idea that he leaves the Court with few regrets, after little more than a year of service, to accept an administrative position. It is also a fair question if Douglas and Murphy do not at times chafe at the restrictions imposed by the routine character and rigid traditions of judicial work. I would like to hazard a guess—for that is all it can be—that the former would like to be back in an important executive post and the latter in the Army.

Frankfurter still remains a victim of his idolators on the one side and of his rabid critics on the other, so that a fair and true judgment of the real man is difficult. In any event, I suspect he has not yet completely reconciled himself to the monastic rule of his judicial order, and still keeps too many outside irons in the fire.

It has been openly and frequently asserted that the relations of some of the judges have not been entirely harmonious. In fact, a well posted Washington correspondent recently stated that "rarely has there been so much evidence of personal feuding." I refrain from mentioning individuals, though they are openly named in widely read press columns. If such conditions really exist as alleged, they are bound to be reflected in the work of the Court and are likely to affect the respect publicly accorded its decisions. I rather imagine that the Chief Justice, who is every inch a great judge with a deep pride in his Court, is not entirely happy with the situation.

With the exception of Stone, it must be admitted that the Court has no member who can quite take rank with men of the stature of Holmes, Brandeis and Cardozo. Still, it should be said that individually they are men of high character and undisputed ability. Under existing circumstances, however, the President could do no better than to select an outstanding jurist of the type of Learned Hand of New York to fill the vacancy now existing.

"How a minority, become a majority, seizing authority, hates a minority."
—*Anonymous.*

A NOTABLE ANNIVERSARY

Our exchanges include the October, 1942, issue of the Massachusetts Law Quarterly which contains the announcement of the celebration of the 250th anniversary of the Supreme Judicial Court of Massachusetts occurring on November 25. The theme of the celebration is "The Contribution of an Independent Judiciary to Civilization". Those who look upon the Bay State from without its borders might suggest as an addition to that theme "The Contribution which the Supreme Judicial Court of Massachusetts has made to the Judicial History of the Nation." What attorney has not relied with assurance on the opinions of such Chief Justices as Shaw, Bigelow, Holmes and Rugg, and those of Associates Justices Gray, Hoar, Field and Loring, among the many able men who have sat on that Court? The occasion certainly merits celebration.

THE AMERICAN'S CREED

THERE is probably no one who does not know the Pledge of Allegiance to the Flag of the United States, repeated so often these days in meetings of young and old. Perhaps less known is the American's Creed, written by William Tyler Page and adopted by a Resolution of the House of Representatives April 3, 1918. The recent death of the author of the Creed brings it to mind again. At the time of his death Mr. Page was Clerk of the Minority Party in the House. The text of the Creed is as follows:

> I BELIEVE in the United States of America as a Government of the people, by the people, for the people; whose just powers are derived from the consent of the governed; a democracy in a republic, a sovereign Nation of many sovereign States; a perfect Union one and inseparable; established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives and fortunes. I therefore believe it is my duty to my country to love it, to support its Constitution, to obey its laws, to respect its flag, and to defend it against all enemies.

YOUR COMMUNITY CHEST

FEELING the vital importance of strengthening the health and welfare defenses of the home front in these difficult war days, members of the legal fraternity are uniting with men and women in industry, business and other fields of public endeavor to put the Community Chest appeal "over the top" with a good percentage this year.

With the rising costs of goods, medical supplies and rental on agency buildings, members of the volunteer Budget Committee of the Community Welfare Federation have estimated $2,800,000 as the minimum amount necessary for the continuation of the corrective and preventive services of the 86 Chest agencies.

The estimated goal, committee members say, also will permit widening agency fields of endeavor, particularly youth activity programs which mean constructive training in good citizenship to thousands of underprivileged children. In talking at a recent Chest rally luncheon in the Biltmore Bowl, on this subject which is close to his heart, Superior Judge Robert H. Scott said in part:

"Democracy depends on the character of its children. It is up to us to see that every one of the children in our community has the best chance possible. Their natural restlessness, increased by war's dislocations, needs proper outlets. Too many of them live in crowded sections, without many advantages. They need the wholesome companionship of boys and girls in clubs which foster constructive training and pastimes; not the gang life that tends to destruction.

"Some of these sections have been reached in the past through Chest agencies which are youth organizations but, hampered by lack of funds, not enough have been reached. Spdendid results have been accomplished; but the recent rise in juvenile delinquency shows that much yet to be accomplished in this field. We cannot afford to relax our efforts. The money that we pledge now for this cause will reap incalculable benefits in the years ahead."

More than 75% of Chest agencies expenditures are for the health, welfare and guidance of children. Hospitals and clinics care for the sick and crippled whose needs cannot wait for war to end. Foster homes and institutions mean home life to thousands of helpless, dependent children. Day nurseries protect and watch over small children whose mothers must work away from home at small salaries.

In the words of the Chest Budget Committee:

"War time employment has not lessened the needs for our home front defenses, which have steadily increased through the years as our population has grown. The expenditure of hundreds of thousands of dollars more for prevention and correction would, in the long run, be a good investment in building a stronger, more self reliant citizenry by preventing disease, delinquency, mental illness, family breakdowns and other social evils costly to the taxpayer. The strength of the nation lies in the health and welfare of every community."

GIVE
TO THE COMMUNITY CHEST!

Hon. Edward T. Bishop,
1605 City Hall,
Los Angeles, Calif.

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